2020 Regular Session

HOUSE BILL NO. 826

BY REPRESENTATIVES PRESSLY, AMEDEE, BAGLEY, ROBBY CARTER, CREWS, EMERSON, FIRMENT, FREIBERG, FRIEMAN, GAROFALO, HARRIS, HORTON, LACOMBE, MCCORMICK, SEABAUGH, THOMAS, AND WHEAT

LIABILITY: Provides relative to the limitations of liability due to the COVID-19 public health emergency

AN ACT

To enact R.S. 9:2800.25, relative to the limitation of liability; to provide for the limitation of liability during the COVID-19 public health emergency; to provide for the liability of certain property owners; to provide for the liability of certain natural and juridical persons; to provide for the liability of state and local governments and political subdivisions; to provide for liability related to the design, manufacture, distribution, use, and administration of personal protective equipment; to provide for the rights of employees; to provide for liability related to business operations; to provide for claims pursuant to the Louisiana Workers’ Compensation Law; to provide for retroactive application; to provide an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 9:2800.25 is hereby enacted to read as follows:

§2800.25. Limitation of liability during the COVID-19 public health emergency

A. During the COVID-19 public health emergency, no natural or juridical person owning or controlling real estate or other premises who voluntarily and without compensation grants a license or privilege, or otherwise permits the designation or use of the whole or any part or parts of such real estate or premises for the purpose of sheltering individuals shall be liable for any civil damages to such

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individuals as a result of any act or omission relating to such real estate or premises
under such license, privilege, or other permission, unless such damages were caused
by the gross negligence or willful or wanton misconduct of that person.

B. During the COVID-19 public health emergency, no natural or juridical
person who voluntarily and without compensation is engaged in the performance of
a contract with and under the direction of the state or its political subdivision shall
be liable for any civil damages as a result of any act or omission relating to the
performance of such contract, unless such damages were caused by the gross
negligence or willful or wanton misconduct of that person.

C. During the COVID-19 public health emergency as declared by
Proclamation Number 25 JBE 2020, any private person, firm, or corporation and
employees and agents of such person, firm, or corporation, who renders assistance
or advice at the request of the state or its political subdivisions shall not be civilly
liable for causing the death of, or injury to, any person or damage to any property
except in the event of gross negligence or willful misconduct.

D. During the COVID-19 public health emergency, no person who
gratuitously renders emergency care, first aid, or rescue aid relating to the emergency
shall be liable for civil damages as a result of such care or aid, unless such damages
were caused by the gross negligence or willful or wanton misconduct of that person.

E. No natural or juridical person, state or local government, or political
subdivision thereof shall be liable for any civil damages for injury or death resulting
from or related to actual or alleged exposure to COVID-19 in the course of or
through the performance or provision of the person's, government's, or political
subdivision's business operations unless the person, government, or political
subdivision failed to substantially comply with the applicable COVID-19 procedures
established by the federal, state, or local agency which governs the business
operations and the injury or death was caused by the person's, government's, or
political subdivision's gross negligence or wanton or reckless misconduct. If two or
more sources of procedures are applicable to the business operations at the time of

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the actual or alleged exposure, the person, government, or political subdivision shall substantially comply with any one applicable set of procedures.

F. No natural or juridical person that designs, manufactures, labels, or distributes personal protective equipment in response to the COVID-19 public health emergency and any other subsequent related proclamations shall be liable for civil damages for injury or death caused by such personal protective equipment unless such damages were caused by the gross negligence or willful or wanton misconduct of that person.

G. During the COVID-19 public health emergency, no natural or juridical person who uses, employs, dispenses, or administers personal protective equipment shall be liable for civil damages for injury or death resulting from or related to such personal protective equipment unless the person failed to substantially comply with the applicable procedures established by federal, state, or local agencies which govern such personal protective equipment and the injury or death was caused by the person's gross negligence or wanton or reckless misconduct. If two or more sources of procedures are applicable to the use, employment, dispensing, or administering of personal protective equipment at the time of the actual or alleged exposure, the person shall substantially comply with any one applicable set of procedures.

H. An employee whose contraction of COVID-19 is determined to be compensable under the Louisiana Workers' Compensation Law shall have no remedy based in tort for such exposure against his employer, joint employer, borrowed employer, statutory employer, any other person or entity listed in R.S. 23:1032(A)(1)(b), and any other person or entity potentially liable pursuant to the Louisiana Workers' Compensation Law unless the exposure was intentional as provided by R.S. 23:1032(B).

I. Notwithstanding the rights of employees as provided by R.S. 23:1032(B), employees who contract COVID-19 and are not covered by the Louisiana Workers' Compensation Law shall have no remedy in tort for such exposure against their employer, joint employer, borrowed employer, statutory employer, any other person
or entity listed in R.S. 23:1032(A)(1)(b), and any other person or entity potentially
liable pursuant to the Louisiana Workers’ Compensation Law unless the exposure
was caused by intentional act.

J. For purposes of this Section, "the COVID-19 public health emergency"
means the COVID-19 public health emergency as declared by Proclamation Number
25 JBE 2020 and as extended by any subsequent proclamations.

Section 2. The provisions of this Act shall apply to all causes of action arising from
any act or omission occurring on or after March 11, 2020.

Section 3. This Act shall become effective upon signature by the governor or, if not
signed by the governor, upon expiration of the time for bills to become law without signature
by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
veted by the governor and subsequently approved by the legislature, this Act shall become
effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part
of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute
part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 826 Reengrossed 2020 Regular Session Pressly

Abstract: Limits liability for certain business operations for the voluntary performance of
public contracts, for gratuitous emergency care, for the performance of business
operations, for the manufacture and use of personal protective equipment, and
provides for the rights of employees during the COVID-19 public health emergency.

Proposed law provides that during the public health emergency declared during the outbreak
of COVID-19, the following classes of persons shall not be civilly liable for any act or
omission related thereto except in the event of gross negligence or willful and wanton
misconduct:

(1) Persons owning or controlling real estate who voluntarily and without compensation
allow such real estate or premises to be used for the purpose of sheltering persons.

(2) Persons who perform in contract with and under the direction of the state or its
political subdivisions.

(3) Persons who render assistance or advice at the request of the state or its political
subdivisions.

(4) Persons who gratuitously render emergency care.

(5) Manufacturers, distributors, and users of personal protective equipment.

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are additions.
Proposed law provides that no person or local or state government or political subdivision thereof shall be liable for civil damages for injury or death resulting from exposure to COVID-19 in the course of or through the performance of a person's business operations unless it is proven that the person, government, or political subdivision was not in substantial compliance with applicable COVID-19 procedures.

Proposed law provides that when two or more sets of COVID-19 procedures apply to a business operation or to the use, dispensing, or administering of personal protective equipment, the responsible party need only substantially comply with one applicable set of procedures.

Proposed law provides that employees not covered by Worker's Compensation shall have no remedy in tort against their employer for exposure to COVID-19 unless caused by an intentional act.

Proposed law is retroactive to March 11, 2020.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds R.S. 9:2800.24)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill:

1. Add provisions relative to liability for the voluntary performance of public contracts, gratuitous emergency care, business operations, personal protective equipment, and the rights of employees.

2. Remove provisions relative to healthcare providers and persons who perform an action outside their usual scope of business.

3. Provide for retroactive application.

The House Floor Amendments to the engrossed bill:

1. Extend protections for business operations to those run by a state or local government or a political subdivision thereof.

2. Remove the burden of proof standard to establish substantial non-compliance with procedures applicable to business operations.

3. Require persons to comply with only one set of COVID-19 procedures for business operations and the use of personal protective equipment when multiple sets of procedures apply.

4. Clarify the classes of employers and persons potentially liable pursuant to the Louisiana Worker's Compensation Law.

5. Add technical amendments.

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